IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2007

CORAM

THE HON'BLE MR. JUSTICE F.M. IBRAHIM KALIFULLA
&
THE HON'BLE MR. JUSTICE V. DHANAPALAN

W.A. Nos.182 & 183 of 2007

A. Raman — Appellant in both the W.As.

vs.

1 State of Tamil Nadu
Represented by Secretary to Government
Information & Tourism Department
Fort St. George, Chennai - 600 009

2 The Commissioner of Tourism
Department of Tourism
Tamil Nadu Tourism Complex
Wallajah Road, Chennai - 600 002

3 N. Kumaresan
Office of the Commissioner of Tourism
Tamil Nadu Tourism Complex
Wallajah Road, Chennai - 600 002

Respondents in W.A.No.182/07

1 N. Kumaresan
Office of the Commissioner of Tourism
Tamil Nadu Tourism Complex
Wallajah Road
Chennai - 600 002

2 The Secretary to Government
Information and Toursim Department
Secretariat
Chennai - 600 009

3 The Commissioner and Director
Tourism Department, Chennai - 600 002

Respondents in WA No.183/07

Writ Appeals filed under Clause 15 of the Letters Patent challenging the common order dated 19.01.2007 passed by a learned Single Judge of this Court in W.P. No.21129 of 2005 and W.P. No.23171 of 2006.

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W.P.No. 21123 of 2005:-

This Writ Petition presented to this Court under Article ; 226 of the Constitution of India to issue a writ of Certiorari to call for the records of the 2nd respondent in impugned Proceedings No Se Mu. Aa. No. 2722/Ma.Va. May 2/03-1 daed 20/6/05 and the consequential proceedings No Sc Mu Aa No 2722/Ma.Va.May 2/03-02 dated 20.6.2005 and proceedings No. Sc. Mu. Aa. No. 2722/Ma. Va. May 2/03-03 dated 20.6.2005 and quash teh same.

W.P.No. 123171/06:-

To Issue a Writ of Certiorari to call for the records in proc.No. 6872/HRD-1/2005 dated 13.7.2006 on the file of the 2nd respondent and quash the same.

For appellant Mrs. Nalini Chidambaram, Sr. Counsel in both the appeals for M/s. Gladys Daniel

For RR 1 & 2 Mr.K.Balakrishnan,Addl.Govt.Pleader in WA No.182 of 2007 and RR 2 and 3 in WA No.183 of 2007

For R3 in WP No.182/07 and R1 in WP No.183/07 Mr. N.S. Nandhakumar

COMMON JUDGMENT

V. DHANAPALAN, J.

Since the writ appeals have arisen out of a common order and the appellant in both the writ appeals happens to be the same person, they are decided by a common judgment.

2. The facts necessary for the disposal of the writ appeals are as under:

a. The petitioner in W.P.No. 21129 of 2005 (hereinafter referred to as "Raman") and the petitioner in W.P. No.23171 of 2006 (hereinafter referred to as "Kumaresan") were appointed as Junior Assistants on 22.02.1993 and 30.03.1984 respectively in the Tourism Branch of the Department of Information and Tourism in the Secretariat. When steps were on to form a separate department for Tourism, Kumaresan was appointed as Receptionist-Grade II on 22.08.1994 by recruitment by transfer; whereas Raman continued to remain in the Secretariat itself and was promoted as Assistant on 15.02.1996 and Kumaresan was appointed as Assistant on 04.07.1996.

b. Though Raman was accorded seniority over and above Kumaresan in view of the fact that he was promoted to the post of Assistant earlier than Kumaresan, the Government, by way of a clarification dated 08.11.2004 pointed out that Kumaresan was senior to Raman. Meanwhile, Raman got promoted

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as Superintendent on 06.11.2000 based on the tentative seniority fixed earlier. Subsequent to filing of a writ petition by Kumaresan, seeking to promote him as Superintendent from the date on which Raman was promoted, the Commissioner of Tourism passed three orders, first one to place Kumaresan above Raman in seniority, second one to revert Raman from the post of Superintendent to Assistant and the third one to promote Kumaresan as Superintendent.

c. The writ petition filed by Raman challenging the above three orders of the Commissioner of Tourism was admitted; but, interim stay was not granted on the ground that the orders of reversion of Raman and promotion of Kumaresan had already been given effect to. In the writ appeal preferred by Raman against the order in W.P.M.P. No.23018 of 2005 in which only notice was ordered and no order of interim stay was granted. Interim stay of Raman's order of reversion was granted. and when the writ appeal was finally disposed of, interim stay of Raman's order of reversion was directed to be continued. Consequently, Raman rejoined duty as Superintendent on 20.09.2005 and Kumaresan also continued in the post of Superintendent which was a leave vacancy. Since the person who had gone on leave joined his services, the Department had no clue whether to revert Raman or Kumaresan. Since Raman could not be reverted as he had in his favour the order of interim stay of his reversion order, Kumaresan was reverted to the post of Assistant.

d. Challenging this, Kumaresan filed a writ petition and obtained stay of his reversion order. Since the Department could not implement the order of interim stay as there was no vacancy of Superintendent, Kumaresan filed a Contempt Petition before this Court. The writ petitions filed by Raman and Kumaresan and the Contempt Petition filed by Kumaresan were taken up together for final hearing by a learned Single Judge. The learned Single Judge upholding the three orders passed by the Commissioner of Tourism and declaring Raman as junior to Kumaresan, dismissed the writ petition filed by Raman and disposed of the writ petition filed by Kumaresan with a direction to restore him to the post of Superintendent with all consequential benefits and the contempt petition filed by Kumaresan was closed as there was no wilful disobedience of interim orders of stay on the part of the Department.

3. Aggrieved by the common order dated 19.01.2007 passed by the learned Single Judge whereby and whereunder Raman's reversion and Kumaresan's promotion as Superintendent were upheld, Raman has preferred the present writ appeals.

4. Heard the learned counsel for the parties.

5. The main grounds of attack of Mrs. Nalini Chidambaram, learned Senior Counsel appearing on the side of the appellant would be that:

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a. having opted to give up the Tamil Nadu Ministerial Service, Kumaresan cannot try to reckon his seniority in the said Service for the purpose of fixing his seniority;

b. the learned Single Judge ought not to have held that the post of Receptionist-Grade II in the Tamil Nadu General Subordinate Service Rules and the post of Assistant in the Tamil Nadu Ministerial Service Rules are identical considering that the scale of pay for both the posts is the same;

c. the finding of the learned Single Judge that the seniority list dated 27.02.1998 was not a final list is erroneous and the reversion of the appellant to the post of Assistant is in violation of principles of natural justice inasmuch as no opportunity to show cause as to why he should not be reverted, was given to the appellant; and

d. as per Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, seniority in a post is to be determined only from the date of appointment to such post and thus, Raman is senior to Kumaresan since the former had joined the post of Assistant five months earlier than the latter.

6.Contending contra, Mr. N.S. Nandakumar, learned counsel appearing for Kumaresan, relying on general rule 9 of the Tamil Nadu State and Subordinate Service Rules, would contend that seniority has been fixed in respect of Muralidevi, Kumaresan, Rajaraman and Raman in the post of Assistant on the basis of their joining as Junior Assistant/Typist and their accrued rights were decided on the basis of ad hoc rules issued on 01.02.1998 by the Government in G.O.Ms.No.262, Department of Information and Tourism and the seniority of these persons has been decided in which Kumaresan has been shown as senior to Raman. He would further contend that when Kumaresan was appointed nine years prior to the appointment of Raman as Junior Assistant, the orders of the Commissioner of Tourism in reverting Raman to the post of Assistant and restoring the post of Superintendent for Kumaresan, which are upheld by the learned Single Judge do not warrant interference by this Court.

7.It is not in dispute that Raman and Kumaresan were appointed as Junior Assistants in the Department of Information and Tourism and the latter is senior to former by nine years. While Raman was promoted from the post of Junior Assistant to Assistant under Tamil Nadu Ministerial Service, Kumaresan was appointed by the method of recruitment by transfer as Receptionist Grade-II and subsequently given the post of Assistant under Tamil Nadu Subordinate Service which carries the same scale of pay of an Assistant. Considering the counter affidavit filed by the Department, the learned Single Judge had held that the posts of

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Assistant and Receptionist Grade-II are identical since both the post were promotional posts to the post of Junior Assistant.

8. As regards the seniority of Kumaresan over Raman, the learned Single Judge has categorically held that Kumaresan had given his willingness to the post of Assistant as early as on 17.04.1995; but the same had not been considered by the Department. Though the learned Senior Counsel for the appellant would contend that Kumaresan had not given his willingness to the post of Assistant on such date, no evidence whatsoever has been placed before this Court in support of her argument and as such, her mere contention, not supported by any evidence, does not have legs to stand.

9. In respect of seniority, some useful reference could be made to Rule 35 (aa) of the General Rules for Tamil Nadu State and Subordinate Services which reads as under:

> "The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade."

10. It is seen that Kumaresan was appointed as Receptionist Grade-II as early as on 22.08.1994 which is actually a post equivalent to the post of Assistant, carrying the same scale of pay. Since the posts of the Assistant and Receptionist Grade-II are identical and Raman and Kumaresan who joined as Junior Assistants are eligible for promotion to both the posts, viz., Assistant and Receptionist Grade-II, once Kumaresan was appointed to the post of Receptionist Grade-II on 22.08.1994 and Raman was given the post of Assistant only on 04.07.1996, the conclusion arrived at by the learned Single Judge that Kumaresan is senior to Raman, taking note of his appointment as Receptionist Grade-II on 22.08.1994 when compared to Raman who was placed in the post of Assistant only 04.07.1996 and giving due consideration to Rule 35(aa) of the Tamil Nadu State and Subordinate Services which states that seniority in a post is to be determined only from the date of appointment to such post, in this case, Assistant/Receptionist Grade-II and also Rule 9 of the General Rules for State and Subordinate Services, we are not able to find any fault with such conclusion arrived at by the learned Single Judge. Thus, we find no reason to interfere with the order of the learned Single on this count.

11. Lastly, though it is contended by the learned Senior Counsel for the appellant that no opportunity of hearing was given to the appellant before the Department came out with the orders in question, it is not that the learned Single Judge has

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not given due consideration to this aspect. The learned Single Judge has held categorically that seniority list dated 27.02.1998 made it clear that it was subject to finalization after the issue of ad hoc rules. It has also been taken note of by the learned Single Judge that Raman's order of promotion to the post of Assistant would not confer on him any seniority which was purely temporary. Though it is argued by the learned Senior Counsel for the appellant that the seniority list dated 27.02.1998 was final in nature, it could be seen from a plain reading of the same that it was only ad hoc in nature. Furthermore, it specifically states that permanent list of seniority would be issued once the service of the aforesaid employees are regularized. In such view of the matter, the seniority list dated 27.02.1998 cannot be of any assistance to the appellant for the purpose of claiming seniority, as contended by the learned Senior Counsel for the appellant, since it is only ad hoc in nature and not a final one. Thus, the categorical finding of the learned Single Judge that the vested right of the appellant was not taken away and that he would be entitled to an opportunity only if his vested right is taken away, is perfectly in order and does not warrant any interference.

12. In view of the foregoing discussion, finding no fault with the common order passed by the learned Single Judge and upholding the same, we dismiss the writ appeals as devoid of any merit. However, there is no order as to costs.

No

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1 The Secretary to Government
Information & Tourism Department
Fort St. George, Chennai - 600 009

2 The Commissioner of Tourism
Department of Tourism
Tamil Nadu Tourism Complex
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3 The Commissioner and Director
Tourism Department, Chennai - 600 002

+ One cc to M/s Gladysdaniel Advocate sR 29139
+ One cc ;to Mr. N. S. Nandakumar SR 28982
+ One cc to Govt Pleader SR 2815

MBS (co)
sg 14/5/07

Common judgment in
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